SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM 1920.

No. ~~512.~~ 130

KEOKUK & HAMILTON BRIDGE COMPANY,
APPELLANT,

vs.

FRED SALM, JR., ELMER F. DENNIS,
WILLIAM E. MILLER, ET AL.,
APPELLEES.

MOTION TO ADVANCE AND SUBMIT CAUSE TO THIS COURT.

F. T. HUGHES,
Solicitor for Appellant.

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM 1920.

No. 512.

KEOKUK & HAMILTON BRIDGE COMPANY,
APPELLANT,

vs.

FRED SALM, JR., ELMER F. DENNIS,
WILLIAM E. MILLER, ET AL.,
APPELLEES.

MOTION TO ADVANCE AND SUBMIT CAUSE TO THIS COURT.

Now comes the appellant, Keokuk & Hamilton Bridge Company, herein and shows to the Court that the appellees have flied motion and brief in this Court in this cause to dismiss appellant's appeal herein for want of jurisdiction in the court below, and for cause says there is no certificate in the record from the court below to this Court in which the question of jurisdiction is certified to this Court and no question of jurisdiction as a Federal Court appears either by the terms of the decree, or order appealed from, or the order allowing the appeal.

The appellant denies the court below had not jurisdiction of the parties and the subject matter and denies that any certificate of the court is necessary in this cause on this appeal and asserts that the appeal was taken from a final decree of the court below

to this Court and that this Court has jurisdiction. This appellant has served the appellees with a copy of this motion and brief on appellees' motion to dismiss and on appellant's motion herein to advance and submit in the first instance on printed briefs in connection with the hearing on appellees' motion to dismiss, that the question on which the decision of this cause depends have been settled by previous decisions of this Court, so as not to need extended or further argument.

And that appellant's motion will come on for hearing in this Court in connection with appellees' motion to dismiss the appeal on Monday the 28th day of February, A. . 1921, the opening of the Court or as soon thereafter as counsel may be heard.

F. T. HUGHES,
Solicitor for Appellant.

Notice of the foregoing motion with copy of brief attached received and service of same acknowledged this 1st day of February, 1921.

LEE STEBENBORN,
States Attorney.

EARL W. WOOD,
Solicitor for Appellees.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1920.

No. 512.

KEOKUK AND HAMILTON BRIDGE COMPANY,
APPELLANT,

vs.

FRED SALM, JR., ELMER F. DENNIS, WILLIAM E. MILLER, ET AL., APPELLEES.

MOTION TO STRIKE.

Now come the appellees, Fred Salm, Jr., county treasurer and *ex officio* collector of Hancock County, Illinois; Elmer F. Dennis, local assessor; William E. Miller, county clerk; Arch C. Williams, J. H. Helms, and Charles S. Tyler, board of review, all in said county and State, by their counsel, and move the court to strike from the files of this court the purported motion of appellant to advance and submit this cause to this court, served upon appellees February 1, 1921, for the following reasons:

1. The motion is ambiguous and uncertain in its language.

2. The motion does not request this court to advance and submit the cause.

3. The motion assigns no reason for advancing and submitting the cause.

4. The motion does not show that it is based on rule 32 of this court.

5. The record shows that this motion was not authorized under rule 32 of this court.

6. Prior to the time that this motion was served upon appellees, the appellant was served with motion of appellees to dismiss this appeal for want of jurisdiction in this court. This motion to dismiss is now pending in this court.

Respectfully submitted,

LEE SEIBENBORN,
State's Attorney,
EARL W. WOOD,
Solicitors for Appellees.

NOTICE.

To David E. Mack and Felix T. Hughes, Solicitors for Appellant:

Please take notice that on Monday, the 28th day of February, A. D. 1921, at the opening of court, or as soon afterwards as counsel may be heard, we will present the fore-

going motion to the Supreme Court of the United States in this cause.

LEE SEIBENBORN,
State's Attorney,
EARL W. WOOD,
Solicitors for Appellees.

Service of a copy of the foregoing motion and notice of motion is hereby acknowledged this 15th day of February, A. D. 1921.

F. T. HUGHES,
Solicitor for Appellant.

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1920.

No. 130

KEOKUK AND HAMILTON BRIDGE COMPANY,
APPELLANT,

vs.

FRED SALM, JR., ELMER F. DENNIS, WILLIAM E. MILLER, ET AL., APPELLEES.

MOTION TO DISMISS AND BRIEF ON MOTION.

LEE SIEBENBORN,
State's Attorney,
EARL W. WOOD,
Attorneys for Appellees.

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1920.

No. 512.

KEOKUK AND HAMILTON BRIDGE COMPANY,
APPELLANT,

vs.

FRED SALM, JR., ELMER F. DENNIS, WILLIAM E. MILLER, ET AL., APPELLEES.

MOTION TO DISMISS.

Now come the appellees, Fred Salm, Jr., county treasurer and ex officio collector of Hancock County, Illinois; Elmer F. Dennis, local assessor; William E. Miller, county clerk; Arch C. Williams, J. H. Helms, and Charles S. Tyler, board of review, all in said county and State, by their counsel, and move the court that the appeal to this honorable court in this cause be dismissed for want of jurisdiction.

This is an appeal from an order of the United States Dis-

trict Court of the Southern District of Illinois, Southern Division, dismissing appellant's bill in equity on appellees' motion. The bill sought to enjoin the collection of certain taxes on appellant's bridge.

This court is without jurisdiction because:

1. There is no certificate in the record from the court below to this court in which the question of jurisdiction is certified to this court and no question of jurisdiction as a Federal court appears, either by the terms of the decree or order appealed from or the order allowing the appeal, nor is there anything in the entire record showing that the court below sends up for consideration the question of its jurisdiction as a Federal court.

2. The question of the jurisdiction of the district court as a Federal court was not in issue in the cause appealed from, but the sole issue as shown by the record was as to the general equitable jurisdiction of a court of equity.

And in the event the foregoing motion is granted the appellees respectfully pray the court to direct the clerk of this honorable court to issue the mandate forthwith.

LEE SIEBENBORN,
State's Attorney.
EARL W. WOOD,
Attorneys for Appellees.

BRIEF ON MOTION.

1.

There is no certificate in the record in which the question of jurisdiction is certified by the court below to this court. The decree of the court below, the order appealed from, and its order allowing the appeal, does not show that it sends up for consideration the question of its jurisdiction as a Federal court.

Printed Record, pages 10 to 16, inclusive.
Printed Record, pages 19 to 20, inclusive.

The record must distinctly and unequivocally show that the court below sends up for consideration a single and definite question of jurisdiction—that is, of the jurisdiction of the court as a court of the United States.

Maynard *vs.* Hecht, 157 U. S., 324; 14 S. Ct., 353; 38 U. S. (L. Ed.), 179.

Filhiol *vs.* Forney, 194 U. S., 356; 24 S. Ct., 698; 48 U. S. (L. Ed.), 1014.

Apapas *vs.* U. S., 233 U. S., 587; 34 S. Ct., 704; 58 U. S. (L. Ed.), 1104.

Courtney *vs.* Pratt, 196 U. S., 89; 25 Sup. Ct., 208; 49 U. S. (L. Ed.), 398.

Huntington *vs.* Laidley, 176 U. S., 668; 20 Sup. Ct. Rep., 526; 44 L. Ed., 630.

2.

An appeal cannot be taken from a district court of the United States direct to the Supreme Court of the United

States where the only question in issue in the cause from which the appeal is taken is the question of the equitable jurisdiction of the Federal court. It is only when the question of the jurisdiction of the lower court as a Federal court is in issue in the cause appealed from that such an appeal will lie.

Smith *ex.* McKay, 161 U. S., 355; 16 Sup. Ct., 490; 40 L. Ed., 731.

Blythe *ex.* Hinckley, 173 U. S., 501; 19 Sup. Ct., 497; 43 L. Ed., 783.

Appellant clearly concedes in its motion to advance and submit this cause, served upon counsel for appellees January 19, 1921, that the only question decided by the lower court in the final judgment from which this appeal was taken was that the court below did not have equitable jurisdiction, and it is also conceded in this motion that the only thing brought to this court for determination is as to whether or not the court below had equitable jurisdiction to hear the cause. Said motion is as follows:

IN THE SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1920.

No. 512.

KEOKUK & HAMILTON BRIDGE CO., *Complainant and Appellant,*

vs.

FRED SALM, JR., ET AL., *Defendants and Appellees.*

MOTION TO ADVANCE AND SUBMIT UNDER RULE 32 OF THIS COURT.

Now comes the appellant, Keokuk & Hamilton Bridge Co., and shows to your honors that the only question in issue on this appeal is the question of the jurisdiction of the court below. The following constitutes a brief statement of the facts involved in this motion. The appellant brought this bill in the court below to enjoin the appellees from taking any further proceeding towards the collection of certain taxes assessed against the appellant upon the assessment alleged to be in violation of the 14th Amendment to the Constitution of the United States and which, if enforced, would result in taking of appellee's property without due process of law and to denying it the equal protection of the laws, and for the other allegations in complainant's bill of complaint, wherein appellant shows that it is without remedy at law to protect itself against the alleged illegal and inequitable acts of the defendants in and about the premises. The appellees in said court filed motion in the nature of the demurrer to dismiss

complainant's bill for the reason that the complainant had a plain and adequate remedy at law, as provided in chapter 120, sections 191-192, of the laws of the State of Illinois and was not, therefore, entitled to the equitable relief prayed. The court below sustained this motion and dismissed complainant's bill and entered a final decree to that effect. The appellants bring this case to this court on appeal, and the sole question here, as shown by the record and opinion of the court below, is one of jurisdiction. The concluding part of the court's opinion says:

"From this discussion, we conclude that plaintiff has a plain, adequate, and complete remedy at law, and it is therefore not necessary to discuss the other questions raised by defendant's motion."

It will be seen that the "remedy at law" on which the court found its opinion is the Illinois Revised Statute, chapter 120, section 191, 5 J. & A. Illinois Statute Annotated, section 9410, page 5542.

This remedy at law we claim is one arising out of the law of the State and not one under the laws of the United States, nor a common-law remedy, but strictly statutory and confined exclusively to the remedy at law by way of defense in the county court of the county in which the taxes are sought to be enjoined or levied or collected, and this county court has no equitable jurisdiction.

The appellant duly served the appellees with notice of the foregoing motion to advance and submit, with copy of brief and argument upon counsel for appellees of record in this court, more than three weeks before the time fixed for submitting said motion by appellant.

Wherefore this appellant prays this honorable court to

reverse the decree of the court below dismissing complainant's bill of complaint and for all other and proper orders in the premises.

F. T. HUGHES,
D. E. MACK,
Attorneys for Complainant.

Clearly it was error to take this appeal to this honorable court. It should have been taken to the United States Circuit Court of Appeals.

Respectfully submitted,

LEE SIEBENBORN,
State's Attorney,
EARL W. WOOD,
Attorneys for Appellees.

NOTICE.

To David E. Mack and Felix T. Hughes, attorneys for appellant:

Please take notice that on Monday, the 28th day of February, A. D. 1921, at the opening of court, or as soon thereafter as counsel may be heard, we will present the foregoing motion and brief to the Supreme Court of the United States in said cause.

LEE SIEBENBORN,
State's Attorney,
EARL W. WOOD,
Attorneys for Appellees.

Service of a copy of the foregoing motion and brief and notice of the motion and brief are hereby acknowledged this 21st day of January, A. D. 1921.

F. T. HUGHES,
D. E. MACK,
Attorneys for Appellant.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM 1920.

No. [redacted]130

KEOKUK & HAMILTON BRIDGE COMPANY,
APPELLANT,

vs.

FRED SALM, JR., ELMER F. DENNIS,
WILLIAM E. MILLER, ET AL.,
APPELLEES.

APPELLANT'S BRIEF ON ~~APPELLANT'S~~ Appellee's MOTION TO DISMISS, AND ON APPELLANT'S MOTION TO ADVANCE AND SUBMIT ON PRINTED BRIEF.

F. T. HUGHES,
Solicitor for Appellant.

IN THE

SUPREME COURT OF THE UNITED STATES.

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IN THE

SUPREME COURT OF THE UNITED STATES.

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FRED SALM, JR., ELMER F. DENNIS,
WILLIAM E. MILLER, ET AL.,
APPELLEES.

APPELLANT'S BRIEF

STATEMENT.

Appellees have served appellant with notice and brief to dismiss the appeal for want of jurisdiction because there is no certificate in the record from the court below to this Court, and no question of jurisdiction as a Federal Court appears by the decree appealed from or the order allowing the appeal, and notice served with brief that the motion will come on for hearing before this Honorable Court on Monday, the 28th day of February, 1921. Our answer is that there was no question of jurisdiction raised by either party in the court below and the cause was submitted on the appellees' motion as we shall show in the nature of a demurrer to complainant's bill assigning causes as shown on Tr. p. 7:

"2. Because the plaintiff has a remedy at law and does not aver in the bill that it has exhausted said remedy.

4. Because no ground of equitable jurisdiction is sufficiently averred in the bill in this suit." And some other causes.

Appellant resists this motion by brief and moves the Court and has served notice on appellees with briefs that appellant will move the Court on the same day to advance and submit the cause on printed briefs and that both motions may be heard together at the time named. Appellee's motion to dismiss as the record shows was sustained by the court below and appellant not further pleading, the Court dismissed complainant's bill with costs saying, Tr. p. 16:

"There is jurisdiction in equity unless there is an adequate remedy at law."

All these matters appear in our statement and brief following herein and as we shall show an appeal lies from the District Court below direct to this Court from a judgment or final decree in such cases in the court below and this is the correct practice, therefore, no certificate as to jurisdiction is required.

POINTS AND AUTHORITIES ON MOTION TO DISMISS AND MOTION TO ADVANCE AND SUBMIT.

The bill and its amendment in this case were framed after the case of the *Raymond v. Chicago Union Traction Co.*, 207 U. S. 20, 53 L. ed. 78, affirming *Chicago Union Traction Co. v. State Board of Equalization*, 114 Fed. 557, and other cases of this Court which we shall cite. The Raymond case in this Court arose under the same revenue laws, that is, *Hurd's Rev. Stat.* 1899, Chap. 120, save that in the Raymond case the injunction was against the State Board of Equalization, whose duty it was to assess capital stock of companies and associations, railroads, railroad track and rolling stock under Sections 108 and 109 of Chap. 120, while the local board or township assessors assessed lands, bridges on the border of the State under the provisions for assessment and taxing of real estate as provided in

Sec. 254 of the Chap. 120. This case was against the local or township assessors and collecting officers restraining them from assessing and collecting certain taxes as is shown in the bill and in the assignment of errors on this appeal:

First—That these assessors assessed appellant's property as real estate at about 150 per cent of the full cash value at the time, while all other property of a similar class and kind for the same year by a systematical and intentional disregard of the laws of said State was assessed at about 30 to 40 per cent of such fair value resulting in an enormous disparity and discrimination, and in violation of the Fourteenth Amendment to the Constitution of the United States and denying to complainant the equal protection of the laws.

Second—That appellant's property was railroad property, and its bridge a railroad forming a link of the railroads engaged in interstate commerce from the State of Illinois across the Mississippi River into the State of Iowa and elsewhere, and as such could only be assessed by the State Board of Equalization as railroad and railroad track and not by the local assessors as real estate, and that in so assessing complainant's property and at a valuation of 150 per cent of the cash value as against 30 or 40 per cent of such fair cash value of other property of a similar class and kind and for the same year this complainant is and was denied the equal protection of the laws and its property being taken without due process of law in violation of the Fourteenth Amendment to the Constitution of the United States.

Third—That under the laws of the State, taxes are assessed and levied against the property and not the person or owner and become a lien and cloud upon the title of appellant's property, which can only be removed by a court of equity and that the county court in which these taxes are sought to be enforced and collected has no equitable jurisdiction to remove liens and clouds on title to real estate.

Fourth—Under the laws of the State of Illinois,—

"When the collector receives money for taxes, he pays the same over to the County Treasurer and other officers authorized to receive same, and if appellant institutes a suit to recover back the taxes so paid, he would be obliged to bring separate suit against each one of the several taxing bodies receiving its proportionate share of the tax, thereby necessitating a multiplicity of suits, and the proportion of the tax which would go to the State of Illinois could not be collected back by any legal proceeding whatsoever."

This of itself warrants a resort to equitable relief.

These and other facts and the law we shall show warrants the equitable relief prayed for in our bills and its amendment.

On hearing of the bill in the court below, appellant moved the Court for a temporary injunction, restraining the appellees from the commission of the alleged wrongful acts.

The appellees filed their motion to dismiss in the nature of a demur to complainant's bill because on the facts alleged the Court had no equitable jurisdiction to restrain the alleged wrongful acts because the appellant had a "plain, adequate and complete remedy at law within the provisions of the Judicial Code on the subject (Sec. 276)", and relying especially upon Chap. 120, Secs. 191 and 192, Revised Statutes of Illinois, as furnishing such adequate remedy at law. The court below heard the motion for temporary injunction and appellee's motion to dismiss plaintiff's bill of complaint and after due consideration on June 26th, 1920, denied complainant's motion for temporary injunction and sustained defendant's motion to dismiss and there being no amendment or further pleading, it was therefore ordered and adjudged by the Court that the defendants recover from the said complainant their costs and charges expended and that execution issue therefor. Transcript of record, pp. 10 and 11. This decree terminated the litigation between the parties on the merits of the case, and from which decree the appellant appeals directly to this Court, under Sec. 238, Judicial Code (36 Stat. L., 1157, Chap. 231, Comp. Stat. 1916, Sec. 1215). This is the proper procedure as shown in *Green v. Louisville & I. R. Co.*, 244 U.S.

499, 503, 61 L. ed. 1280-1284, and in *Columbus R. W. Power & Light Co. v. Columbus*, 249 U. S. 394, 406, 63 L. ed. 669, 675, where this Court again referring to Judicial Code, Sec. 238, says:

"As we have said the Court decided the case upon the merits and dismissed the bill as a constitutional question is involved, the appeal brings the whole case here. We are of the opinion that there was jurisdiction in the District Court to entertain the bill as it presented questions arising under the Fourteenth Amendment to the Federal Constitution, not so wholly lacking in merit as to afford no basis of jurisdiction. Jurisdiction does not depend upon the decision of the case and should be entertained if the bill presents a question of a character giving the party the right to invoke the judgment of a Federal Court. We think the elaborate and careful opinion of the District Judge shows that substantial questions arising under the Federal Constitution were presented by the bill and that the Court had jurisdiction."

In *Shaffer v. Carter* (Mar. 1, 1920), reported in L. R. A. Advanced Opinions, United States Supreme Court, April 1, 1920, at p. 235, 236, this case practically in point, where the Court says:

"An application for an interlocutory injunction was denied, and the decree entered not only disposed of the application, but dismissed the action. Plaintiff, apparently unaware of this, appealed to this court under Sec. 266, Judicial Code, from the refusal of the temporary injunction. Shortly afterwards he took an appeal under Sec. 238, Judicial Code, from the same decree as a final decree dismissing the action. The latter appeal is in accord with correct practice, since the denial of the interlocutory application was merged in the final decree. The first appeal (No. 531) will be dismissed."

And this holding runs through all the cases down to *De Rees v. Costagota*, No. 4, L. R. A. Advanced Opinions, United States Supreme Court, January 21, 1921, p. 111.

The opinion of the Court in appellant's case shows most clearly that Federal questions involving the Fourteenth Amendment were presented by the bill and passed on by the court below with other matters. The whole case was decided upon the merits.

For these reasons the motion to dismiss the appeal for want of certificate from the court below or for any other reason must be overruled.

We offer the further suggestions in this *Brief* on the merits and to the end that the decree of the court below be *reversed.*

The court below did not and could not say complainant's bill did not state facts warranting the equitable relief prayed for under the chancery rules of the Federal Courts but held that a certain law of the State, Chap. 120, Sections 191 and 192, afforded such an adequate remedy at law as to bar any equitable proceedings in any Court and that the complainant however meritorious his cause might be was confined to his defense at law provided for this Chapter, whether complainant be a resident or non-resident of the State and whether or not by reason of non-residence of Federal questions, complainant could choose his forum, and would bring his bill in the Federal Court. He must and could only make a *legal* defense in the County Court of the State under the Chapter.

This was challenged for the reasons that a law of a State may furnish an adequate remedy at law for those who must from residence or otherwise accept the forum of the State, but this does not of itself prevent a party who may and can resort to the Federal Courts for such equitable relief and his mere choice is sufficient and it is not in the mouth of the State to say that its remedy is as good and efficient as that of the Federal Court. For it is and always has been the law that a remedy available only in the State court is for this reason alone not an adequate remedy where the plaintiff by reason of his Federal question has the right to have the matter determined in the Federal Court.

Then in *Smyth v. Ames,* 169 U. S. 466, 517, 42 L. ed. 819, 838, it is said:

"Wherever a citizen of a State can go into the courts of a State to defend his property against the illegal acts of its officers, a citizen of another State may invoke the jurisdiction of the Federal Courts to maintain a like defense. A State cannot tie up a citizen of another State, having property rights within its territory invaded by unauthorized acts of its officers, to suits for redress in its own courts."

Franklin County v. Nevada Power Co., 264 Fed. 643, U.S.A.
Pittsburg v. Keokuk & Hamilton Bridge Co., 68 Fed. 19.
McCanihay v. Wright, 121 U. S. 201-202.
Whitehead v. Shattuck, 138 U. S. 146.

In the Franklin County case on p. 645, speaking of the Nevada State law of 1914, as affording such adequate remedy at law, the Court says:

"It might be readily pointed out (as was done by the court below in its opinion) why that contention is not well-founded; but we think it unnecessary to do so, for the reason that the law is that the adequate remedy at law which is the test of equitable jurisdiction in the Federal Court must exist in those courts." Citing authorities.

Then in *Pittsburg v. Keokuk & Hamilton Bridge Co.* the Circuit Court of Appeals of that circuit by Jenkins, Circuit Judge, says:

"The judiciary act of 1789 provided that 'suits in equity shall not be sustained in either of the courts of the U. S. in a case where a plain, adequate and complete remedy may be had at law.' 1 Stat. 82; Rev. Stat. Sec. 723. This provision has been held to be merely declaratory, making no alteration whatever in the rules of equity upon the subject of legal rmedy. Boyce's Ex'rs v. Grundy, 3 Pet. 210, 215; Wehrman v. Conklin, 155 U. S. 314, 15 Sup. Ct. 129. The adequate remedy at law which is the test of equitable jurisdiction in the Federal Courts is that which existed at the adoption of the judiciary act. Thus, it was said by Judge Story in Pratt v. Northam, 5 Mason, 95, 105, Fed. Cas. No. 11, 376:

> 'It has been often decided by the Supreme Court that the equity jurisdiction of the courts of the United States is not limited or restrained by the local remedies in the different states; that it is the same in all the states, and is the same which is exercised in the land of our ancestors from whose jurisprudence our own is derived.' "

Now this law of the State, Chap. 120, Sections 191 and 192, referred to and relied on by the court below, Transcript of Record 15, is confined to a county court provided for in Section 18, of Article 6, of the Constitution of the State and has no common law or equity jurisdiction but confined to probate in

guardian matters and collection of revenues. Sec. 12 of this Constitution says:

"The Circuit Courts shall have original jurisdiction in all cases in law and equity."

So that in case a taxpayer chooses to resist the collection of taxes alleged to be illegally assessed should he pay these taxes to the Treasurer under protst and attempt to sue back for these taxes, he could not sue in this county court, but he would have to go to the Circuit Court.

Now, then, the only way that complainant can have any chance of paying his money and preventing it from being disturbed so that he will have to incur a multiplicity of suits is to allow the collector to sue in this county court for the taxes and let himself get defeated and then pay the taxes to the Treasurer and give a bond besides and an appeal to the Supreme Court from this tax judgment and the Treasurer in that case will hold the money until the Supreme Court has passed on the appeal and if his appeal is unsuccessful, the Supreme Court orders the Treasurer to pay the money over and judgment against the taxpayer for costs, penalties and etc., and that is the end of it.

There is no law in the State, as your Honors said in *Raymond v. Chicago Union Traction Company*, 207 U. S. 20, where on p. 390 of the Opinion, referring to the—

Existence in Tennessee of a statute providing for paying over the amount of the alleged illegal tax to the officer holding the warrant and granting to the taxpayer a right to sue to recover back the taxes thus paid, also providing that the tax when originally paid before the suit should be paid into the State Treasurer where it was to remain until the question was decided."

Further says:

"There is no statute of a similar nature in Illinois which has been called to our attention but some of the cases in the State hold that such a suit may be maintained against the collector when the money was paid under protest."

And your Honors will see on p. 15, of the Transcript of Record, that the court below answers your Honors' conclusions by quoting this Chap. 120, and Sections 191 and 192, to the

end that your Honors must have overlooked this Chapter because it was and had in force at that, for a long time prior and still is the law.

Now, when we compare this Chap. 120 with its provisions limiting the taxpayer to his action in this county court and depriving him of any right to common law action in any Court of competent jurisdiction and especially if he has the choice of suing in the Federal Court by reason of Federal questions or diverse citizenship, he cannot sue in such courts. This Statute furnishes no adequate remedy at law barring equitable or common law suits in the Federal Courts. It is not an adequate remedy at law within the varied constructions of that term. The Chap. 120 and Sections 191 and 192 provide only that—

"The Court shall hear and determine the matter in a summary manner without pleadings, and shall pronounce judgment as the right of the case may be."

There is no provision for a jury to hear and determine the weight of evidence, nor having the evidence certified to the Supreme Court so that court can really try the case *de novo*, and so the suit which the court below talks about while the money is held by the Treasurer pending the appeal is nothing more than a review of the law as determined and applied by the county court below and so there is no law of the State as your Honors say in the Raymond case by which the taxpayer can pay and then sue back as in the State of Tennessee, and the money be held by the Treasurer pending the suit, and moreover this Chap. 120 affords no means by which the money paid to the collector can be held while the taxpayer can sue for its recovering back in any court, State or Federal, to which he may have the right to resort, but must confine all his rights to the county court and its summary proceedings without pleadings and etc.

So your Honors were right in saying that there was "No statute of a similar nature in Illinois',' and because of that fact this Court did hold in the Raymond case that, "There is jurisdiction in equity unless there is an adequate remedy at law."

STATE LAW ADEQUATE REMEDY MUST BE AS BROAD AS FEDERAL LAW.

It was held in *Singer Sewing Machine, etc. Co. v. Benedict,* 229 U. S. 491, 57 L. ed. 1288-1291, that a law of a State which gives an adequate remedy at law must be one in which the party making a tender of the taxes must have the right to sue in any court of competent jurisdiction in which the party has a right to resort. This right must be one,—

"Which could be enforced by an action at law in the Circuit (U. S.) Court no less than the State Court if the elements of Federal jurisdiction such as diverse citizenship and the requisite amount in controversy."

In *Union Pac. R. Co. v. W'eld County,* 247 U. S. 282, 62 L. ed. 1110-1117, this case discusses the question of an adequate remedy at law provided in statutes and under the Statute of Colorado, which had provided such remedy at law as we may say would be good under the equity rules of the U. S. Court made some change in the law by which,—

"For any statement, rebate or refund of taxes shall be recommended by such County Commissioners, they should certify same to the Colorado tax commission for their approval."

And this change in the State law had the effect of conferring upon the Federal Court jurisdiction in equity. Mr. Justice Van de Vantet's delivering the opinion of the Court said:

"An examination of the new statute shows that the controversy just outlined is not without some real basis and that its solution is not free from difficulty. The question is purely one of *State law,* and so far as we are *advised,* the Supreme Court of the State has not *passed* on or *considered* it. A ruling by us on the question would neither settle it for that court nor be binding in an action to recover the tax if paid. In these circumstances it cannot be said that the company certainly or plainly has an adequate and complete remedy at law. On the contrary, the existence of such a remedy is debatable and un-

certain. And this being so, the situation is not one in which cognizance of the present suit properly can be declined."

And held that it could not be said the company certainly or plainly had adequate and complete remedy at law, and we may say that we could stop right here with the assurance that the court below was in error in dismissing complainant's bill and must be reversed, and these cases have certainly closed the discussion upon the subject matter of adequate remedy at law and the court below was in error in holding that the Chap. 120, of the laws of the State of Illinois afforded this complainant such adequate remedy as to preclude its going into the Federal Court for equitable relief.

REVENUE STATUTES OF ILLINOIS DO NO PREVENT RESORT TO EQUITY.

Chapter 120, Sections 191 and 192, of the revenue law of Illinois, do not provide an exclusive and adequate remedy in all cases arising out of revenue laws of that State even in courts of that State, but decisions of the Supreme Court that where the property has been fraudulently assessed at too high a rate or where it has been systematically and knowingly assessed at a different rate or valuation from other similar classes or property which is fraudulent in law and the same effect as intentional fraud, courts of equity will restrain the collection of such a tax.

Berkley v. Dale, 213 Ill. 616-617.
State Board of Equalization v. People, 191 Ill. 528-537.
Pacific Hotel Co. v. Lieb, 83 Ill. 602-609.
Lemont v. Singer & Talcott Stone Co., 98 Ill. 102.
Calumet etc. ock Co. v. O'Connell, 265 Ill. 106.

In the *Berkley v. Dale* case it is said:

"It has been held that an assessment may be impeached for fraud, and by reason of fraud in asking the assessment an assessment may amount to no assessment at all."

This was an action on bill in equity to enjoin the collection of a tax, and where the doctrine is clearly recognized, and the courts hold that where the assessment must have been so unreasonably high in comparison of other similar classes of such property, the assessor must have known of this unreasonably high assessment, the same would be as fraudulent in law as had the assessment been made with that intent.

The Calumet etc. Dock Co. v. O'Connell was a bill for an injunction which was sustained to enjoin an excessive assessment and the right to file such a bill was clearly recognized and these cases all recognize the doctrine laid down by this court in *Raymond v. Chicago Union Traction Co.*, 207 U. S. p. 30-28.

JURISDICTION OF STATE AND FEDERAL COURTS.

The court below in his Honor's opinion, Tr. p. 15, would show that the State court could decide Federal questions as well as the United States Court, and since the appellant is afforded such defense at law through the said Chap. 120, it must make such defense in the said county court. We know State courts can decide Federal questions either in law or equity as well as the Federal courts and must do so in all cases except where by reason of the laws of Congress, the parties have a right to resort to the Federal courts, and in all such cases, the State law must stand aside and the Federal courts will take jurisdiction at the choice of the litigant and decide for itself all the questions in the case and so it is in the case here.

BRIDGE A RAILROAD AND MUST BE ASSESSED BY THE STATE BOARD OF EQUALIZATION.

Complainant's bridge property described in the Tr. p. 2, shows that the property described extends by railroad from 707¾ feet east of the east end of said bridge in the State of Illinois to the east end of the bridge, thence by railroad track along the center line of said bridge 1567 feet to the State line

between Illinois and Iowa, there across said bridge to some distance by railroad to a connection with other railroads in Iowa and complainant claims that this bridge is in fact a railroad with railroad track which can only be assessed by the State Board of Equalization under Section 109, Chap. 120 of the R. S. of Illinois, and this Court has so expressly held as to this identical bridge in *Pittsburg, Cinn. & St. Louis Ry. Co. v. Keokuk & Hamilton Bridge Co.,* 131 U. S. 371-389, where it is said:

"Nor can we have any doubt that the Bridge Company was a railroad company, and the bridge a railroad, within the meaning of these statutes. The principal purpose and use of the bridge was the passage of railroad trains. It was, in substance and effect, a railroad built over water, instead of upon land; and, strictly speaking, it was a railway viaduct rather than a bridge. Bridge Proprietors v. Hoboken Co., 1 Wall. 116."

Now the local assessors in the case at bar assessed this property as "real estate" and more properly as lands under Sections 76 of said Chap. 120 by "Actually view and determine as nearly as practical the fair cash value of each track." Then *Bridges on Border of State,* Sec. 354, *How Assessed,* assessed "As real estate and all provisions of the law for assessment of real estate applies to the assessment and taxation of such bridges", and this is simply valued by view.

There is no way provided for ascertaining the value of this property as railroad property like that provided in Sections 40 to 44 requiring the railroad or other companies "owning, operating railroads" in the State to make sworn returns of the taxable value of such property and by the other provivsions of this law the State Board of Equalization has power to take testimony of persons and experts if necessary to ascertain the real value of such property for taxation. It will readily be seen how important both to the State and taxpayer this power to ascertain the real values of such property to the end that it be taxed on the same per cent values of all other property in the State, and when it is seen the local assessor who probably has no knowledge of values of railroads and railroad property, but only that of his neighbors farms on which he can assess from

view and such knowledge simply guessing at it, we see the wisdom of the law placing the ascertainment of their values in the hands of State Boards with all their knowledge of railroads in the State and means of ascertaining such values. The force of our contention that when railroad property is assessed by a different method and tribunal for the same year and class, "which results an enormous and material discrimination (150 per cent against the Bridge as 30 to 40 per cent other real estate) against complainant's property," complainant has been denied the equal protection of the laws within the meaning of the Fourteenth Amendment to the Constitution of the United States.

REMEDY AT LAW UNDER THE STATE STATUTES.

Even though such statutes may be sufficient under the State law to prevent a resort to equity in such state it does not follow that such a statute would prevent a resort to equity in the Federal Courts.

Remedies at law to test violations of the Federal Constitution do not necessarily oust the equity jurisdiction when such violations arise out of *Special Circumstances.*

Denial of one's constitutional rights under the Fourteenth Amendment to the Federal Constitution a cause for equitable intervention.

Cummings v. Merchant's State Bank, 101 U. S. 153.

Raymond v. Chicago Union Traction Co., 207 U. S. 20, 52 L. ed. 78-88.

Same case, 114 Fed. 557-566.

Greene v. Louisville & I. R. Co., 244 U. S. 499, 61 L. ed. bot. p. 1280-1285.

Union P. R. Co. v. Weld County, 247 U. S. 282, 62 L. ed. pgs. 1110-1116.

United States v. Board, etc. (Apr. 16, 1919), __ U. S. __.
Franklin County v. Nevada Power Co. (May 17, 7920), 264 Fed. 643.
Schaffer v. Caster (March 1, 1920), __ U. S. __.

The case of *Union P. R. Co. v. Weld County* shows how carefully and exacting this Court is where a State law is set up as "remedy at law" preventing injunctive relief and if the statutory remedy is in the least different from the common law remedy or remedies provided by Congress, such State remedy will be denied and not prevent such injunctive relief. The law of Colorado for a time being did provide the remedy for paying taxes and suing back to recovery which was the equivalent of the common law remedy in such cases, but thereafter this State law was modified in some special particulars, that is before the County Commissioners could refund such taxes without "abatement, rebate or refund"; such refund could not be paid until reported to the Colorado tax commissioners for their approval and this was held such modification and change of the existing law as would authorize equitable relief in the Federal Courts when the party by reason of the Federal question or otherwise entitled should apply to the Federal Court, and this Court in the Raymond case which arose under the laws of Illinois reviews the whole case and finds there are no laws in the State of Illinois for the collection of revenue by which a person can pay or tender the taxes under duress or otherwise and sue back for their recovery.

From the foregoing cases it must conclusively appear that complainant's bill stated a cause of action as stated by the Circuit Court in *Chicago Union Traction Co. v. State Board of Equalization*, 114 Fed. 557, 566, which is the case affirmed in the Raymond case where the Circuit Court says:

"We have no doubt that complainants may intrench themselves against this invasion by the writ of injunction. One of the primary grounds of equity jurisdiction is to reach cases involving mistake, fraud or coercion, and the relief necessary to their correction. The cases under consideration come clearly within this jurisdiction. It is incomprehensible that the com-

plainants may not avert this threatened invasion of their rights —that they must first yield and then turn prosecutors in a court of law to recover their loss. The fundamental guarantees of the Constitution must not be thus emasculated."

And we may say from all these authorities that complainant's right to the relief in equity as prayed in its bill of complaint stands unquestioned and that our proposition in our statement that the assessment of appellant's property at about 150 per cent of its full cash value at the time, while other property of the same class and kind with a systematical and intentional disregard of the laws of the State was assessed at about 30 or 40 per cent of such value calls for equitable relief under the Amendment of the Constitution of the United States.

Second—That in assessing complainant's property as real estate when the same is railroad property and railroad track, by local assessors in disregard and in defiance of the laws of the State that such property must be assessed by the State Board of Equalization and at the enormous disparity and discrimination shown in the bill also calls for equitable relief under the Fourteenth Amendment of the Constitution of the United States, and that the holding of your Honors in the numerous cases cited must be held to apply to complainant's cause of action herein and the decree of the court below dismissing complainant's cause must be reversed.

Third—And because the remedy at law providing for in said Chap. 120 does not afford the equitable relief complainant is entitled and said county court has no equitable jurisdiction and cannot remove clouds upon complainant's title by reason of the lien of the tax levies and that a court of equity alone can remove such clouds upon title to complainant's property each and all call for the relief in equity to which complainant is entitled and your Honors will reverse the court below to the end that complainants may have such relief and for proper orders in the premises.

F. T. HUGHES,
Solicitor for Appellant.